IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

Crl.Rev.Pet.No. 3645 of 2007()

CRA.686/2006 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CC.378/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHALAKUDY

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REVN. PETITIONER:

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1. SIVARAJAN
S/O CHATHAYI
PAPPARI HOUSE
KUTTICHIRA VILLAGE
VYLATHARA DESOM, CHALAKUDY
THRISSUR DISTRICT

2. SHAJU, S/O. AYYAPPAN
MUNNILATHU HOUSE
KUTTICHIRA, KORMALA DESOM
THRISSUR DISTRICT

BY ADV. SRI.P.K.ASHOKAN
SRI.M.R.VENUGOPAL

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3645 OF 2007

Dated this the 10th day of October, 2007

O R D E R

In this revision filed by accused Nos.1 and 2 in C.C.No.378/02 on the file of the JFCM, Chalakudy, they challenge the conviction entered and the sentence passed against them for offences punishable under sections 452 and 323 IPC.

2. The case of the prosecution can be summarised as follows:-

Benny, the son of PW1, had separated accused Nos.1 and 2 and one Baiju who were quarrelling on the main road. On account of the enimity towards Benny, on 13.9.01 at about 9.30 p.m. the six accused persons formed themselves into an unlawful assembly sharing the same common object and criminally trespassed into the house of PW1 and asked for Benny. Finding that Benny was not in the house they assaulted PW1. A1 and A2 were armed with a knife and a chopper respectively. A1 dragged PW1 to the courtyard and kicked him on the abdomen. He fell down and screamed aloud. A2 threatened PW1 to do away with him by brandishing a chopper. The accused have thereby committed offences punishable under sections 143, 147, 148, 452, 323 and

506(ii) read with section 149 IPC.

3. On the side of the prosecution 5 witnesses were examined as PWs 1 to 5 and two documents were got marked as EXts.P1 and P2.

4. The accused denied the incriminating circumstances put to them by the court below and maintained their innocence. They did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 12.10.06 acquitted accused Nos.3 to 6 but convicted A1 and A2(revision petitioners herein) for offences punishable under sections 452 and 323 IPC. For the conviction under section 452, A1 and A2 were each sentenced to simple imprisonment for two years and to pay a fine of Rs.5,000/- each and on default to pay the fine, to suffer simple imprisonment for six months. From out of the fine amount as and when collected, a sum of Rs.8,000/- was directed to pay to PW1, the de facto complainant. No separate sentence was imposed for the conviction under section 323 IPC.

6. Eventhough the revision petitioners preferred an appeal as Crl.Appeal No.686/06 before the Sessions Court, Thrissur, as per judgment dated 31.7.07 the III Additional

Sessions Judge, Fast Track-I, Thrissur, confirmed the conviction entered and the sentence passed against the revision petitioners. Hence, this revision.

7. Eventhough the learned counsel for the revision petitioners assailed the conviction recorded by the courts below on various grounds, this court sitting in revision cannot dislodge the conviction which has been recorded after a careful evaluation of the oral and documentary evidence in the case. The courts below have believed PWs 1 and 2 who deposed in terms of the occurrence. PW1 is the injured de facto complainant. PW2 is a friend of Benny, the son of PW1. I, therefore, do not find any good ground to interfere with the conviction recorded against the revision petitioners. If at all the learned Magistrate erred, that was in not imposing a separate sentence for the conviction under section 323 IPC. The conviction is accordingly confirmed.

8. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioners. It has come in evidence that subsequently on the next day Benny, the son of PW1, was brutally murdered by A1 and A2 who are facing trial for murder. The present

occurrence was prior to the incident in which Benny was murdered. Having regard to the entire facts and circumstances of the case, I am of the view that the imprisonment of two years awarded for the conviction under section 452 IPC is not commensurate with the gravity of the offence committed by the revision petitioners in this case. I am, therefore, of the opinion that imprisonment for a period of one year will suffice to meet the ends of justice. Accordingly, the sentence imposed on the revision petitioners is altered and for the conviction under section 452 IPC, each of them shall suffer simple imprisonment for one year.

In the result, this revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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